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Due Process

may create enforceable liberty interests in the prison setting.[148]

The New York Court of Appeals, in *Doe v. Coughlin*,[149] found that if regulations exist that promise certain benefits, so long as participation in the program is not contingent upon subjective factors, a protected interest may arise.[150] Therefore, the state and federal courts appear to be consistent in their application of due process to this right potentially arising in the prison context.

Children's Village v. Holbrook[151]
(decided November 21, 1991)

Children's Village, a not-for-profit child care agency, brought an article 78 proceeding appealing the denial of its application for a special permit to operate a group home in a single-family residential district.[152] The court held the zoning ordinance to be facially invalid under the due process clause of the New York State Constitution[153] insofar as it restricted the size of a "functionally equivalent" family while not similarly restricting the size of a traditional family.[154]

Children's Village proposed to operate a group home for up to ten abused or neglected adolescent boys in an R-22 zoning district in the Town of Clarkstown. Under the Town Zoning Ordinance, single-family detached residences are permitted as of right in an R-22 district.[155] "Family" is defined as "[a]ny number of individuals related by blood, marriage or adoption [or not more

148. *Id.*

149. 71 N.Y.2d 48, 518 N.E.2d 536, 523 N.Y.S.2d 782 (1987), *cert. denied*, 488 U.S. 879 (1988).

150. *Id.* at 55, 518 N.E.2d at 540-41, 523 N.Y.S.2d at 786-87 (when a state adopts programs where there is an expectation of early release from prison or a family reunion, an expectation of certain rights arises, however, if there is a regulatory scheme attached to that program, no legitimate expectation exists).

151. 171 A.D.2d 298, 576 N.Y.S.2d 405 (3d Dep't 1991).

152. *Id.* at 299-300, 576 N.Y.S.2d at 406.

153. N.Y. CONST. art. I, § 6.

154. *Children's Village*, 171 A.D.2d at 300-01, 576 N.Y.S.2d at 406-07.

155. *Id.* at 299, 576 N.Y.S.2d at 406.

than five (5) individuals who are not so related], living together in a single housekeeping unit."[156] Agency Group Homes are permitted within an R-22 district only by special permit issued by the Town Board.[157]

Children's Village applied for such a permit and the application was denied. It then brought an article 78 proceeding, which was converted to an action for a declaratory judgment by the supreme court. The supreme court concluded that plaintiff's proposed group home was sufficiently family-like in structure as to constitute a family for purposes of the zoning ordinance.[158] The Town of Clarkstown appealed.

The appellate division found it unnecessary to decide whether the structure of plaintiff's group home represents the functional equivalent of a biological family.[159] Rather, the court held that the ordinance's definition of family is unconstitutional.[160] The court found that a definition which "restricts the size of a functionally equivalent family to five individuals not 'related by blood, marriage or adoption' . . . while not similarly restricting the size of a traditional family comprised of persons so related" violates the due process clause of the state constitution.[161] The court further rejected the town's contention that the provision requiring group homes to obtain a special permit in a single-family residential district is enforceable as severable from the

156. *Id.*

157. *Id.* at 299-300, 576 N.Y.S.2d at 406.

158. *Id.* at 300, 576 N.Y.S.2d at 406.

159. *Id.* The Town conceded that under the state constitution a group home for children that resembles "a traditional family in every sense except for the absence of a biological or legal relationship among the occupants cannot validly be excluded from a single-family residence zoning district." *Id.* However, the town contended that because the supervision of the children will be accomplished by a rotating professional staff of child care specialists and not by house parents, the proposed group home so deviates from the functional equivalent of a biologically unitary family, that this, therefore, permits a different, stricter zoning regulation. *Id. See also* Crane Neck Ass'n v. New York City/Long Island County Servs. Group, 61 N.Y.2d 154, 460 N.E.2d 1336, 472 N.Y.S.2d 901, *cert. denied*, 469 U.S. 804 (1984).

160. *Children's Village*, 171 A.D.2d at 300, 576 N.Y.S.2d at 406.

161. *Id.* at 300-01, 576 N.Y.S.2d at 406-07 (quoting Town Zoning Ordinance § 106-6c).

ordinance's definition of family.[162] The court reasoned that, "without a constitutionally valid definition of family in the Zoning Ordinance, its specific regulation of group homes is also objectionable in that it may be applied to 'exclude [from the class of occupancies not requiring a special permit] households that due process requires be included.'"[163]

It is well settled law that a family-like agency group home may not constitutionally be made subject to special zoning regulations.[164] Consequently, the provision requiring agency group homes to obtain a special permit, which does not differentiate between functionally equivalent group homes and institutional group homes, is invalid and unenforceable.[165]

The Federal Due Process Clause offers no similar protection to the non-traditional family.[166] The United States Supreme Court upheld an even more restrictive zoning ordinance which limited land use in the Village of Belle Terre, New York to one-family dwellings. In *Belle Terre*, family was defined as "'[o]ne or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants,'" with an exception for no more than two unrelated persons.[167] The Court found that no fundamental right guaranteed by the Federal Constitution was involved.[168] Rather, the zoning ordinance was held to be a valid exercise of the police power -- a power that is "ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."[169] The exclusion of the "regimes of boarding houses, fraternity houses and the

162. *Id.* at 301, 576 N.Y.S.2d at 407.

163. *Id.* (quoting McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 550, 488 N.E.2d 1240, 1243, 498 N.Y.S.2d 128, 132 (1985)).

164. *See* Group House of Port Washington, Inc. v. Board of Zoning and Appeals of North Hempstead, 45 N.Y.2d 266, 380 N.E.2d 207, 408 N.Y.S.2d 377 (1978); City of White Plains v. Ferraioli, 34 N.Y.2d 300, 313 N.E.2d 756, 357 N.Y.S.2d 449 (1974).

165. *Children's Village*, 171 A.D.2d at 301, 576 N.Y.S.2d at 407.

166. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

167. *Id.* at 2.

168. *Id.* at 7.

169. *Id.* at 9.

like" was deemed reasonable, as they tend to present urban problems.[170]

The New York Court of Appeals subsequently invalidated a similar ordinance on state due process grounds.[171] The New York court found that "restricting occupancy of single-family housing based on the biological or legal relationships between its inhabitants bears no reasonable relationship" to the legitimate goals of zoning legislation.[172] In order not to "exclude any households that due process requires be included" such an ordinance must contain an "alternative definition of family" which would include "any number of unrelated persons living together" as the "functional equivalent of a traditional family."[173]

Thus, the New York State Constitution provides protection under its due process clause that is not available under the parallel provision in the Federal Constitution.

SUPREME COURT

ALBANY COUNTY

Quirk v. Regan[174]
(decided January 15, 1991)

Non-judicial state court employees[175] challenged the constitu-

170. *Id.*

171. *See McMinn,* 66 N.Y.2d 544, 488 N.E.2d 1240, 498 N.Y.S.2d 128 (1985).

172. *Id.* at 549, 488 N.E.2d at 1243, 498 N.Y.S.2d at 131.

173. *Id.* at 550, 488 N.E.2d at 1243-44, 498 N.Y.S.2d at 132 (citing *Group House of Port Washington, Inc.*, 45 N.Y.2d at 272-73, 380 N.E.2d at 210, 408 N.Y.S.2d at 380; City of White Plains v. Ferraioli, 34 N.Y.2d 300, 305-06, 313 N.E.2d 756, 758, 357 N.Y.S.2d 449 (1974)).

174. 565 N.Y.S.2d 422 (Sup. Ct. Albany County 1991).

175. *Id.* at 423. Petitioners were the collective bargaining representatives of the state court employees. *Id.* In addition, other labor organizations representing non-judicial employees of the New York State Court system brought a claim to federal court asserting that chapter 190 was unconstitutional under the contracts clause of the United States Constitution. Association of